

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

MATOZO AREVALO MELKIE,
Plaintiff,

v.

**TEXAS DEPARTMENT
OF CRIMINAL JUSTICE,**
Defendant.

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EP-23-CV-159-FM

**ORDER ACCEPTING THE REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE AND DISMISSING PLAINTIFF’S COMPLAINT**

Matozo Arevalo Melkie asserts the Texas Department of Criminal Justice (TDCJ) violated his civil rights while he was a prisoner at the Rogelio Sanchez State Jail in El Paso, Texas. Pl.’s Compl., ECF No. 1 at 1, 4. His complaint is dismissed with prejudice for the following reasons.

Melkie is a 33-year-old state prisoner serving a four-year sentence for family violence and aggravated assault with a deadly weapon. *See* <https://inmate.tdcj.texas.gov/InmateSearch> (search for TDCJ No. 02376547). He is currently incarcerated at the Robertson Unit in Abilene, Texas. *Id.* His anticipated release date is June 28, 2024. *Id.*

Melkie reports that on November 20, 2022, he injured his foot and ankle when he fell off his bunk. Pl.’s Compl., ECF No. 1 at 4. He claims prison authorities gave him ibuprofen for his pain and took an X-ray of his foot. *Id.* But he adds “till this day they haven’t told [him] anything or done anything about it.” *Id.* He asserts he still “can’t walk on [his] foot.” *Id.* He complains he has “gone many times to medical in pain but they haven’t attended [him] at all.” *Id.* He asks the Court to intervene in his behalf “so he can get full and serious medical attention.” *Id.* He also asks the Court for help him receive permission to remain in the United States. *Id.*

The United States Magistrate Judge to whom the Court referred this matter screened Melkie’s complaint pursuant to 28 U.S.C. § 1915A. R. & R., ECF No. 2 at 1; *see* 28 U.S.C. § 636(b)(1)(B) (permitting a district court, on its own motion, to refer a pending matter to a Magistrate Judge for a report and recommendation). After completing the review, the Magistrate Judge recommended that the Court dismiss the complaint as frivolous, pursuant to 28 U.S.C. § 1915A(b)(1), because it lacked an arguable basis in law or fact. *Id.* at 2 (citing *Talib v. Gilley*, 138 F.3d 211, 213 (5th Cir. 1998)). The Magistrate Judge explained “[t]he Texas Department of Criminal Justice is a state agency which enjoys absolute Eleventh Amendment immunity from all suits in federal court, including claims for injunctive relief and state law claims.” *Id.* (citing *Cox v. Texas*, 354 F. App’x 901, 902–03 (5th Cir. 2009) (“Eleventh Amendment immunity applies to all suits brought against ‘States and their agencies ... regardless of the relief sought.’ ”) (quoting *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993))).

A party has fourteen days to file written objections to a magistrate judge’s proposed findings, conclusions, and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A party who files timely written objections to a magistrate judge’s report is entitled to a “de novo” review of those portions of the report to which the party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). As to other portions of the report—or when a party does not file written objections—the court applies a “clearly erroneous, abuse of discretion and contrary to law” standard of review. 28 U.S.C. § 636(b)(1)(A); *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). After completing its review, a court may accept, reject, or modify the report, in whole or in part. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b).

The Magistrate Judge entered the report and recommendation on May 10, 2023. To date, a

party has not submitted objections. *See Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988) (“[A] party is not entitled to de novo review of a magistrate’s finding and recommendations if objections are not raised in writing by the aggrieved party . . . after being served with a copy of the magistrate’s report.”).

Accordingly, after completing a plain-error review, the Court concludes that the Magistrate Judge’s findings and conclusions are neither clearly erroneous nor contrary to law. *Wilson*, 864 F.2d at 1221. The Court also observes that it lacks the authority to grant Melkie permission to remain in the United States. The Court therefore enters the following orders:


IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 2) is **ACCEPTED**, and the findings and conclusions of the Magistrate Judge are **ADOPTED** by the Court.

IT IS FURTHER ORDERED that Melkie’s “Civil Rights Complaint” (ECF No. 1) is **DISMISSED WITH PREJUDICE** as frivolous pursuant to 28 U.S.C. § 1915A(b)(1).

IT IS FURTHER ORDERED that all pending motions, if any, are **DENIED**.

IT IS FINALLY ORDERED that the District Clerk shall **CLOSE** this case.

SIGNED this 7th day of June 2023.



FRANK MONTALVO
SENIOR UNITED STATES DISTRICT JUDGE